

Appendix C:

Administrative Subpoena Authorities Held by
the Department of Treasury

Accompanying a
Report to Congress on the
Use of Administrative Subpoena Authorities
by Executive Branch Agencies and Entities

Pursuant to Public Law 106-544

Appendix C

Administrative Subpoena Authorities Held by the Department of Treasury P.L. 106-544, Section 7(a), Executive Branch Study on Administrative Subpoena Authority, Scope and Protections

* Denotes Administrative Law Judge authority

<i>Name of Component or other Entity</i>	<i>Source and Common Name of Authority (Including Act Name, P.L. and USC & CFR titles)</i>	<i>Scope of Authority Description</i>	<i>Enforcement Mechanism Description</i>	<i>Notification Req. and Privacy Protections</i>	<i>Issuance Standards and Qualifiers or Procedures</i>
Department of the Treasury (Bureau of Alcohol, Tobacco, and Firearms [ATF]):	27 U.S.C. §202 (Federal Alcohol Administration Act) 49 Stat. 977, renumbered Pub.L. 100-690	“power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation.” 15 U.S.C. §49, as incorporated by reference in 27 U.S.C. §202(g)	Agency Order of Writ of Mandamus issued by U.S. District court. See 15 U.S.C. §49.	None.	Relevance to any matter under investigation.
Treasury Department (Bureau of Alcohol, Tobacco, and Firearms [ATF]):	26 U.S.C. §7602 Internal Revenue Code Pub.L. 94-455 Pub.L. 97-248 Pub.L. 105-206 27 C.F.R. § 70.24 <u>et</u>	“(a) Authority to summon, etc. For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the	(a) In general. Whenever any person summoned under 26 U.S.C. 7602 neglects or refuses to obey such summons, or to produce books, papers,	(c) Notice of contact of third parties. (1) General notice. An officer or employee of the Internal Revenue Service may not contact any person	Relevance or materiality to an inquiry into the tax liability of any person.

	<p><u>seq.</u></p>	<p>liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary is authorized—(1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry; (2) To summon the person liable for tax or required to perform the act, or any officer or of the internal revenue laws.” employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary may deem proper, to appear before the Secretary at a time and</p>	<p>records, or other data, or to give testimony, as required, application may be made to the judge of the district court or to a U.S. magistrate for the district within which the person so summoned resides or is found for an attachment against him as for a contempt.(b) Persons who may apply for an attachment. Appropriate ATF officers are authorized to apply for an attachment as provided in paragraph (a) of this section. The authority to apply for an attachment for the enforcement of summons may not be redelegated.</p> <p>27 C.F.R. § 70.24</p>	<p>other than the taxpayer with respect to the determination or collection of the tax liability of such taxpayer without providing reasonable notice in advance to the taxpayer that contacts with persons other than the taxpayer may be made.</p> <p>(2) Notice of specific contacts. The Secretary shall periodically provide to a taxpayer a record of persons contacted during such period by the Secretary with respect to the determination or collection of the tax liability of such taxpayer. Such record shall also be provided upon request of the taxpayer.</p> <p>(3) Exceptions. This subsection shall not apply.</p> <p>(A) to any contact which the taxpayer has authorized;</p> <p>(B) if the Secretary determines for good cause shown that such</p>	
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		<p>place named in the summons and produce such books, papers, records, or other data and to give such testimony, under oath, as may be relevant or material to such inquiry; and (3) to take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry. (b) Purpose may include inquiry into offense. The purposes for which the Secretary may take any action described in paragraph (1),(2), or (3) of subsection(a) include the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws.”</p>		<p>notice would jeopardize collection of any tax or such notice may involve reprisal against any person; or (C) with respect to any pending criminal investigation. 26 U.S.C. §7602(c) and (a) When the Bureau summons the records of persons defined by 26 U.S.C. 7609(a)(3) as “third party recordkeepers”, the person about whom information is being gathered must be notified in advance, except when: (1) The summons is served on the person about whom information is being gathered, or any officer or employee of such person, or (2) The summons is served to determine whether or not records of the business transactions or affairs of an identified person have been made or kept, or (3) The summons does not identify the person with respect to whose</p>	
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				<p>liability the summons is issued (a "John Doe" summons issued under the provisions of 26 U.S.C. 7609(f)), or (4) The appropriate ATF officer petitions, and the court determines, on the basis of the facts and circumstances reasonable cause to believe the giving of notice may lead to attempts to conceal, destroy, or alter records relevant to the examination, to prevent the communication of information from other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying or production of records. (b) Within 3 days of the day on which the summons was served, the notice required by paragraph (a) of this section a summons as to which notice is require under paragraph (a) of this section shall be served upon the person entitled to notice, or</p>	
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				<p>mailed by certified or registered mail to the last known address of such person, or, in the absence of a last known address, left with the person summoned. No examination of any records required to be produced under a summons as to which notice is required under paragraph (a) of this section may be made: (1) Before the close of the 23rd day after the day notice with respect to the summons is given in the manner provided in this paragraph, or (2) Where a proceeding under paragraph (c) of this section was begun within the 20-day period referred to in that paragraph and the requirements of paragraph (c) of this section have been met, except in accordance with an order of the court having jurisdiction of such proceeding or with the consent of the person</p>	
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				<p>beginning the proceeding to quash. (c) If the person about whom information is being gathered has been given notice, that person has the right to institute, until and including the 20th day following the day such notice was served on or mailed, by certified or registered mail, to such notified person, a proceeding to quash the summons. During the time the validity of the summons is being litigated, the statutes of limitation are suspended under 26 U.S.C. 7609(e). Title 26 U.S.C. 7609 does not restrict the authority under 26 U.S.C. 7602 (or under any other provision of law) to examine records and witnesses without serving a summons and without giving notice of an examination.”</p> <p>27 C.F.R. § 70.25</p>	
Treasury	26 U.S.C. §5274	“power to require by	Agency Order of Writ	None	Relevance to any

Department (ATF):	(Internal Revenue Code); Pub.L. 94-455; 27 C.F.R. §70.24 <u>et seq.</u>	subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation.” 15 U.S.C. § 49, as incorporated by reference in 26 U.S.C. § 5274	of Mandamus issued by U.S. District court. See 15 U.S.C. §49.		matter under investigation
Treasury Department (Office of Comptroller of the Currency):	12 U.S.C. §1818(n)	The agency or any designated representative shall have the power to issue, revoke, quash or modify subpoenas and subpoenas duces tecum	The agency or any party to any proceeding under 12 USC 1818 may apply to the US Dist. Ct. where the witness resides or carries on business for enforcement of the Subpoena	Right to Financial Privacy Act 12 USC 3401 <u>et seq.</u>	Same as standard set forth in <u>US v. Morton Salt</u> , 388 U.S. 632 (1950).
Treasury Department (Office of Comptroller of the Currency):	12 U.S.C. §481	Gives examiners the authority to administer oaths and access documents during an examination.		None	Any institution supervised by the OCC
Treasury Department (Office of Comptroller of the Currency):*	12 CFR 19.34 Administrative Hearing Subpoenas	Upon application of a party the ALJ may issue a subpoena or subpoena duces tecum requiring the attendance of a witness	The subpoenaing party or any aggrieved party may seek enforcement pursuant to 12 CFR 19.26(c) which provides for	Right to Financial Privacy Act 12 USC 3401 <u>et seq.</u>	A party must make a showing of general relevance and reasonableness of scope of the testimony or other evidence

		at the hearing or the production of documentary or physical evidence at the hearing	application to the appropriate US Dist. Ct. for an order requiring compliance		sought
Treasury Department (Office of Comptroller of the Currency):	12 CFR 19.170 and 19.171 Administrative Discovery Depositions	A party may take the deposition of an expert, or of a person, including another party, who has direct knowledge of matters that are non-privileged, relevant, and material to the proceeding and where there is a need for the deposition	Enforcement shall be in accordance with the procedures set forth in 12 CFR 19.27(d) which provides for application to the US Dist. Ct. for an order requiring compliance	A party desiring to take a deposition shall give reasonable notice in writing to the deponent and to every other party to the proceeding, stating the time and place for taking the deposition and the name and address of the person to be deposed.	
Treasury Department (Office of Comptroller of the Currency)*:	12 CFR 19.26 Administrative Document Subpoenas to Non-Parties	Any party may apply to the Administrative Law Judge for the issuance of a document subpoena to any person who is not a party to the proceeding	Apply to the appropriate US Dist. Ct. for an order requiring compliance	Right to Financial Privacy Act 12 USC 3401 <u>et seq.</u>	The application to the ALJ must contain a proposed subpoena and a brief statement showing the general relevance and reasonableness of the scope of documents sought
Treasury Department (Office of Comptroller of the Currency)*:	12 CFR 19.27 Administrative Deposition of Witness Unavailable for Hearing	A party desiring to preserve the testimony of a witness who will be unavailable for hearing may apply to the ALJ for issuance of a subpoena including a subpoena duces tecum	Apply to the appropriate US Dist. Ct. for an order requiring compliance with the portions of the subpoena that the ALJ has ordered enforced	A party desiring to take a deposition shall give reasonable notice in writing to the deponent and to every other party to the proceeding, stating the time and place for taking the deposition	The ALJ may issue a deposition subpoena upon a showing that: (1) the witness will be unavailable to attend or may be prevented from attending the hearing because of age, sickness or infirmity or

				and the name and address of the person to be deposed.	will otherwise be unavailable; (2) the testimony is reasonably expected to be material; and (3) taking the deposition will not result in any undue burden to any other party and will not cause undue delay of the proceeding
Treasury Department (Customs):	Tariff Act of 1930, P.L. No. 91-271; 19 U.S.C. §1509; 19 C.F.R. §163.7		Summons, enforceable in Court	Third Party summons: Requires that the person to whom the records pertain has an opportunity to stay compliance with the summons by giving notice in writing to the person summoned not to comply and mailing by registered or certified mail. Notice need not be given if summons issued to determine existence of records if a Court order is obtained stating that notice may lead to an attempt to conceal, destroy or alter records. Right to Financial Privacy Act, 12 U.S.C. §3401 <u>et seq.</u>	Special-Agent-In-Charge is responsible for any such ongoing investigation and will determine the propriety of the service of Customs Summons. Any exceptions to this determination will be coordinated by the Assistant Commissioner (Investigations) and any other relevant Assistant Commissioners in consultation with Chief Counsel.

<p>Treasury Department (Customs):</p>	<p>Controlled Substances Enforcement, P.L. No. 91-513, 21 U.S.C. §967</p>	<p>Authorizes the Secretary of the Treasury to subpoena witnesses and records relevant to the enforcement of 18 U.S.C. §545 (smuggling), with respect to controlled substances (as defined in 21 U.S.C. §802)</p>	<p>Controlled Substances Enforcement Subpoena, enforceable in Court</p>	<p>Right to Financial Privacy Act, 12 U.S.C. §3401 <u>et seq.</u></p>	<p>Must be signed by one of the following: Assistant Commissioner (Investigations), Deputy Assistant Commissioner (Investigations), Director, Strategic Investigations Division Customs Attaches, Senior Customs Representatives, Special-Agents-In-Charge, Resident-Agents-In-Charge. If company or individual refuses to comply, Chief Counsel should be contacted. Can be redelegated by Special-Agency-In-Charge or the Resident-Agency-In-Charge.</p>
<p>Treasury Department (Customs):</p>	<p>International Emergency Economic Powers Act (IEEPA) 50 U.S.C. §1701 <u>et seq.</u>; 31 C.F.R. Part 171</p>	<p>Inherent in IEEPA is Customs ability to demand any records relating to a possible violation of the statute. “In any case in which a report by a person could be required under this paragraph, the President may require the production of any books of</p>	<p>Summons, enforceable in Court</p>	<p>Right to Financial Privacy Act, 12 U.S.C. § 3401 <u>et seq.</u></p>	<p>Must be signed by one of the following: Assistant commissioner (Investigations), Deputy Assistant commissioner (Investigations), Director, Strategic Investigations Division Customs Attaches, Senior Customs</p>

		<p>account, records, contracts, letters, memoranda, or other papers, in the custom or control of such person.” 50 U.S.C. § 1702(a)(2). Courts have ruled that “the requirement that one engaged in handling commodities under government regulation by required to keep records would be rendered futile and nugatory if there was no right of inspector of such records by the proper government representatives.”</p> <p>Wilson v. United States, 221 U.S. 361(1911).</p>			<p>Representatives, Special-Agents-In-Charge, Resident-Agents-In-Charge. If company or individual refuses to comply, Chief Counsel should be contacted. Cannot be redelegated.</p>
<p>Treasury Department (Customs):</p>	<p>Bank Secrecy Act, P.L. No. 97-258, 31 U.S.C. §5318; 31 C.F.R. §103.71-77</p>	<p>For any investigation for the purpose of civil enforcement of violations of the Currency and Foreign Transactions Reporting Act, U.S.C. §§5311-24, 12 U.S.C. §1829b, 12 U.S.C. §1951 <u>et seq.</u>, or section 411 of the National Housing Act:</p> <p>1) Examine any books, papers, records or other</p>	<p>Summons of Financial Institutions and Their Officers, enforceable in Court</p>	<p>Any financial institution that makes a disclosure of any possible violation of law or regulation or a disclosure pursuant to this subsection or any other authority, shall not be liable to any person under any law or regulation for disclosure or for failure to notify of such</p>	<p>Deputy Commissioner, Assistant Commissioners, and Special-Agent-In-Charge</p>

		<p>data of domestic financial institutions relevant to the recordkeeping and reporting requirements of 31 U.S.C. §§5311 <u>et seq.</u>; 2) summon a financial institution, an officer or employee of a financial institution, or any person having possession, custody, or care of the reports and records to give testimony under oath.</p>		<p>disclosure.</p> <p>Unless authorized by Secretary or delegate in writing, information obtained from this summons authority shall not be disclosed Right to Financial Privacy Act, 12 U.S.C. §3401 <u>et seq.</u></p>	
<p>Treasury Department (Customs):</p>	<p>Arms Export Control Act, P.L. No. 90-629, 22 U.S.C. §2778 (Statute states that Customs shall have same authority as stated in 50 U.S.C. §2411(a)(c) (through the Export Administration Regulations [62 Fed. Reg. 12714, March 25, 1996] (EAR) codified at 15 C.F.R. Parts 730-774, which have been continued in effect after expiration of the promulgating statutory authority, (Export Administration Act, 50 U.S.C. §2401 <u>et seq.</u></p>	<p>Customs may obtain information and make such inspector of the books, records, and other writings premises, or property related to and AECA violation.</p>	<p>Summons, enforceable in Court</p>	<p>Right to Financial Privacy Act, 12 U.S.C. §3401 <u>et seq.</u></p>	<p>Must be signed by one of the following: Assistant Commissioner (Investigations), Deputy Assistant Commissioner (Investigations), Director, Strategic Investigations Division Customs Attaches, Senior Customs Representatives, Special Agents-In-Charge, Resident-Agents-In-Charge. If company or individual refuses to comply, Chief Counsel should be contacted. Cannot be redelegated.</p>

	(EAA), by Executive Order of the President. See Notice of Continuation of Executive Order No. 12924, August 212, 2001 66 Fed. Reg. 44025)).				
Treasury Department (Office of Foreign Asset Control [OFAC]):	Trading with the Enemy Act (TWEA) 50 U.S.C. app §1 et seq	Investigate any transactions in which a foreign person or state subject to economic sanctions has an interest	Presumably U.S. District Court contempt proceedings (none have been judicially enforced in recent history)	None	None
Treasury Department (Office of Foreign Asset Control [OFAC]):	International Emergency Economic Powers Act 50 U.S.C. § 1601 <u>et seq.</u>	Investigate any transactions in which a foreign person or state subject to economic sanctions has an interest	Presumably U.S. District Court contempt proceedings (none have been judicially enforced in recent history)	None	None
Treasury Department (Financial Crimes Enforcement Network[FinCen]) :	31 U.S.C. §5318 (the Bank Secrecy Act), and 31 CFR §§103.71-103.77.	Section 6(a)(4) of the Inspector General Act of 1978, The Secretary of the Treasury may summon a financial institution, an officer or employee of a financial institution (including a former officer of employee)f, or any person having	The Attorney General may request an order from a federal district court to comply. Failure to comply with the order may be punishable by contempt. No notification requirements.	Summons must be issued for the purpose of civil enforcement investigations of violations of the Bank Secrecy Act or regulation thereunder. N/A	

		<p>possession, custody, or care of the reports and records in connection with investigations for the purpose of civil enforcement investigations of the Bank Secrecy Act or any regulation thereunder.</p> <p>NOTE: This authority has been delegated by regulation to, among other agencies, the Office of Financial Enforcement, an office department that no longer exists within the Treasury Department. The functions of this office have been subsumed by the Financial Crimes Enforcement Network ("FinCEN"). While FinCEN has the authority to issue summonses, it does not do so. The Internal Revenue Service issues summonses, with FinCEN approval, when it needs information in connection with a Title 31 Bank Secrecy Act</p>			
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		examination of certain financial institutions.			
Treasury Department (Office of Inspector General):	Inspector General Act of 1978, as amended, 5 U.S.C.A. app. §3, Section 6(a)(4)	“production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by [the IG Act]...procedures other than subpoenas shall be used by the Inspector General to obtain documents and information from Federal agencies.	“in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United States district court”	Right to Financial Privacy Act, 12 U.S.C. Section 3401 <u>et seq.</u>	Decision to issue IG subpoena is reviewed by auditor’s or investigator’s supervisors, by IG Counsel, and by the IG. Alternative means to obtain information are tried first, and scope of subpoena is made as narrow as possible, consistent with case needs.
Treasury Department (IRS):	Internal Revenue Code 26 USC §7602(a); §6420(e)(2); §6421(g)(2); §6427(j)(2)	Authority to summons books, records or other data, and to obtain testimony that may be relevant or material to the investigation for the purpose of ascertaining the correctness of a tax return, making a tax return, determining the liability of any person for a tax, or collecting a tax liability.	Judicial enforcement; 26 USC 7604; 7609(f), (g) & (h); 7210; but see 7609(b) and 7612(b)(4)	26 USC 7602(c); 7609(a); 7611(a), (b); 7612(c)(2); 6103(a); 6503(j)	26 USC 7602(a)(2); US v. Powell, 379 US 48 (1964), “may be relevant”; 26 USC 7602(b), inquiry into “any offense”; 26 USC 7602(d), 7603, 7605, 7609, 7611, 7612, 6503(j)
Treasury	Money and Finance 31	Authority to summon	Judicial Enforcement	Subject to Right to	Criminal Investigation

Department (IRS):	USC §5318	books, papers, records, or other data, and to obtain testimony as may be relevant in connection with investigations for the purpose of civil enforcement of 31 U.S.C. 5311, <u>et seq.</u>	31 USC 5318(e) Subject to Right to	Financial Privacy Act 12 USC 3401-3422	limited to use of Title 31 summons in relation to processing civil forfeitures in relation to Title 31 violation.
Treasury Department (United States Secret Service [USSS]):	Presidential Threat Protection Act of 2000, P.L. 106-544; 18 USC 3486 (Administrative Subpoenas/Protective Threats)	Section 3486 (a)(1)(A)(ii) authorizes the Secretary of Treasury to issue an administrative subpoena if the Director of the Secret Service determines that a threat against a Secret Service protectee is imminent.	Subsection (9)(c) provides for DOJ enforcement by requesting an order requiring a subpoenaed person or entity to appear. Failure to appear may result in a contempt order.	Subsection (a)(5) permits the recipient of an administrative subpoena to seek to modify the scope of the administrative demand, or modify any a court nondisclosure order acquired by the government.	Determination of imminent threat against a Secret Service protectee or conduct constituting an offense enumerated under 18 USC 871 (Threat Investigations Involving the President and Successors to the Presidency) and 18 USC 879 Threat Investigations Involving former Presidents and other Secret Service Protectees).
Treasury Department (Office of Thrift Supervision):	Section 10(g)(2) of the Home Owners' Loan Act (HOLA), 12 U.S.C. §1467a(g)(2) [investigative subpoenas] and Section 5(d)(1)(B) of	The Office of Thrift Supervision (OTS) authority to issue administrative subpoenas in investigative proceedings arises under section 10(g)(2), of the Home Owners' Loan Act (HOLA), 12	OTS's administrative subpoenas are enforced through a civil action brought by OTS in United States District Court. See e.g., 12 U.S.C. 1818(n).	All OTS investigative proceedings and formal examination are private and the record of such proceedings, including subpoenas issued by OTS, are confidential. See 12 CFR 512.3. Further, the provisions of the	OTS administrative subpoenas are issued incident to investigative proceedings and formal examinations. Accordingly, their issuance must be in compliance with lawful authority,

	<p>the HOLA, 12 U.S.C. §1464(d)(1)(B); Section 7(j)(15) of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. §1818(n); and section 19(c) of the FDIA, 12 U.S.C. 1820(c). [formal examination proceedings]</p>	<p>U.S.C. 1467a(g)(2), and to issue administrative subpoenas in formal examination proceedings with respect to savings associations and their affiliates arises under section 5(d)(1)(B) of the HOLA, 12 U.S.C. 1464(d)(1)(B), section 7(j)(15) of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. 1818(n), and section 10(c) of the FDIA, 12 U.S.C. 1820(c).</p>		<p>Right to Financial Privacy Act, 12 U.S.C. §3410 <i>et seq.</i>, apply to OTS administrative subpoenas. There is no requirement that OTS provide notification to the subject of a subpoena prior to the issuance of the subpoena.</p>	<p>related to the subject of the investigation or formal examination and intended to obtain information that is relevant and material to the investigation or examination.</p>
<p>Treasury Department (Treasury Inspector General for Tax Administration [TIGTA]):</p>	<p>Inspector General Act of 1978, 5 U.S.C. app. §3</p>	<p>Section 6(a)(4) of the Inspector General Act permits IG to require by subpoena the production of documents or information necessary in the performance of the functions assigned by the Act.</p>	<p>Subpoena may be enforced by order by appropriate district court. (I.G. Act §6(a)(4)). Current procedure is to ask DOJ to seek enforcement of subpoena, if necessary.</p>	<p>Right to Financial Privacy Act of 1978, 12 U.S.C. §§3401-3422, for financial records provides for notification to customer</p>	<p>Administrative subpoena cannot be served on federal agencies. Administrative subpoena cannot be used for testimony. Electronic communications in electronic storage accessed pursuant to 18 U.S.C. §2703</p>

